FILED
United States Court of Appeals
Tenth Circuit

July 16, 2012

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

WILLIE COOPER, Plaintiff - Appellant, v. THE HOME DEPOT; HOME DEPOT USA, INC.; RICHARD GASKILL; JOHN HUTZENBUHLER; WILLIAM POLZIN, DANIEL MOORE, Defendants - Appellees.	No. 11-3308 (D. Kansas) (D.C. No. 6:11-CV-01006-JAR)

ORDER*

Before **HARTZ**, **ANDERSON**, and **O'BRIEN**, Circuit Judges.

Plaintiff Willie Cooper, proceeding pro se, appeals the dismissal of his amended complaint by the United States District Court for the District of Kansas. We conclude that we lack jurisdiction to consider the appeal because the notice of appeal was untimely.

On June 17, 2011, the district court issued an order granting the defendants' motion to dismiss and entered a separate judgment. Three days later

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*After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

it sua sponte entered an order under Fed. R. Civ. P. 60(a) to fix a clerical mistake in the original order dismissing the case. (Apparently, the only change was to add a mention that one of the defendants had joined the motion to dismiss submitted by the others.)

On July 20 Mr. Cooper filed a "Motion to Set Aside Judgment and To Amend Complaint." R., Vol. 2 at 182. Because the motion was untimely if construed as a motion under Fed. R. Civ. P. 59, the district court construed it as a motion under Fed. R. Civ. P. 60(b) and denied it on July 25. On August 8 Mr. Cooper filed a "Motion for Reconsideration," *id.* at 221, which the district court denied on August 18. And on September 15 Mr. Cooper filed his "Second Motion for Reconsideration" (actually his third), *id.* at 238, which was denied the next day. Mr. Cooper filed a notice of appeal on October 17.

Mr. Cooper argues in his brief to this court that the district court erroneously dismissed most of his claims. Defendants filed a motion to dismiss the appeal for lack of jurisdiction. The motion is well-taken.

A litigant in a civil case must ordinarily file a notice of appeal "with the district clerk within 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(A). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). "*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate

Procedure." *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008) (internal quotation marks omitted).

The district court entered judgment on June 17, 2011. The June 20 corrected order did not restart the filing period because there was no substantive change in the disposition. *See FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211–12 (1952) ("[T]he mere fact that a judgment previously entered has been reentered or revised in an immaterial way does not toll the time within which review must be sought. Only when the lower court changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered should the period within which an appeal must be taken or a petition for certiorari filed begin to run anew." (footnotes omitted)); *see generally* 16A Charles A. Wright et al., Federal Practice and Procedure § 3950.2, at 223–27 (4th ed. 2008). Mr. Cooper's October 17 notice of appeal was therefore far too late. His repeated postjudgment motions did not afford him additional time to file his appeal from the judgment. Although the time to appeal can be postponed by a timely motion under Fed. R. Civ. P. 59 (which must be filed within 28 days after entry of judgment, *see* Fed. R. Civ. P. 59(e)) or by a Fed. R. Civ. P. 60 motion filed within 28 days after entry of judgment, *see* Fed. R. App. P. 4(a)(4)(A)(vi), Mr. Cooper's first postjudgment motion challenging the judgment was not filed until July 20, which was 33 days after the entry of judgment.

Perhaps Mr. Cooper's notice of appeal was timely with respect to one or more of his motions for reconsideration. But his opening brief on appeal challenges only the original judgment; it makes no mention of his postjudgment motions. He has therefore waived any arguments that we have jurisdiction to consider. *See Morris v. Noe*, 672 F.3d 1185, 1193 (10th Cir. 2012) ("an issue or argument insufficiently raised in the opening brief is deemed waived" (brackets and internal quotation marks omitted)).

In response to the defendants' motion to dismiss for lack of jurisdiction, Mr. Cooper argues that we should allow his appeal under the doctrine of equitable tolling. But the Supreme Court has "ma[d]e clear that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement" and that courts have "no authority to create equitable exceptions to jurisdictional requirements." *Bowles*, 551 U.S. at 214. He also argues fraud on the court, judicial misconduct, and perjury. These arguments, however, have nothing to do with the timeliness of the appeal; they complain only about the proceedings leading to the judgment.

We GRANT Defendants' motion and DISMISS the appeal for lack of jurisdiction.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge